



## — Montana Office of Public Instruction

Linda McCulloch  
State Superintendent

February 29, 2008

The Honorable Dennis Rehberg  
516 Cannon House Office Building  
Washington, D.C. 20515-2601

Dear Representative Rehberg,

Your education staffer, Brent Mead, asked my new federal liaison, Rusty Harper, for our office's opinion of Rep. Don Young's bill – **HR 648 No Child Left Behind Improvements Act of 2007**. He probably just wanted a simple indication of what we liked and didn't like, but that exercise has turned into an office discussion about the fundamental nature of the No Child Left Behind Act.

While these comments represent the general consensus of myself with our deputy superintendent and both assistant superintendents, my meetings with teachers and administrators across Montana lead me to believe that the Montana education community agrees with the basic thrust of this analysis.

In a nutshell, this bill makes NCLB better. It is our guess that Rep. Young has been listening to the education community in Alaska who share many of our issues. I know that the National School Board Association is actively supporting the bill. Our concern is that the bill does not go far enough.

HR68 has a number of "fixes" that make good sense and help Montana schools, especially:

1. Allowing the "N" size to vary, that is the number below which a subgroup or school has too few students to be reliably analyzed (Section 101);
2. Lowering from 10% to 5% the number needed to meet the "safe harbor" provision (Section 101);
3. Ending the practice of double- and triple-counting students who fall into more than one subgroup. This will stop artificially lowering scores for schools (Section 101);
4. Not identifying a school as needing improvement unless there is a failure in two consecutive years in the same subject for the same group of students (Section 301);
5. Raising the alternative assessments to 3% of students with the greatest learning barriers (Section 105);
6. Not penalizing schools based on subgroups that constitute fewer than a state-determined percentage (up to 10%) of the school or district's total enrollment (Section 103; and
7. Allowing states not to test a child during the first year in the United States and also allowing multiple testing in one year as English proficiency increases (Section 106.)

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Other changes make sense, even though they have little impact on Montana schools. In particular, we would support:

1. Allowing more flexibility to states in measuring Adequate Yearly Progress, even though establishing a gain scores process may cost too much to be of great use in Montana (Section 103);
2. Giving states maximum flexibility to make plans (Section 201.) We are in complete agreement, even though the present and past secretaries have interpreted the law so narrowly that waivers would have been less likely;
3. Amending the choice rules to impact fewer students and not requiring transfers when they entail more cost, new construction, etc. (Section 301); and
4. Deferring severe sanctions any year in which the federal government does not increase funding for either Title I by \$2.5 billion or IDEA by \$2 billion (Section 304.)

All of these improvements are real improvements. The trouble is that they do not address the serious problem with the basic structure of the No Child Left Behind Act. True, there have been some good parts of the law. Accountability is important. Testing is important. The emphasis on helping underachieving subgroups of students is excellent. It is also true that we knew all of these things before NCLB. But the NCLB law has at least six fatal flaws that actually hurt education rather than help it.

1. The eventual 100% proficiency target is a worthy goal. Everyone wants every single child to learn to the best of their capacity. Everyone also knows that it is unrealistic to believe that all children, regardless of disabilities, can reach the proficiency level required by law. It is important to set realistic proficiency targets with realistic timelines to achieve those targets. When severe consequences are attached to an unattainable goal, the school system is harmed.
2. Reading and math are important, but multiple measures are needed. How well does the school teach science? History? Government? The arts, library skills, and all the other subjects? Can the students not only take tests but apply knowledge? Engage in critical thinking? Work with others? Are students gaining healthy bodies? Emotional maturity? The unintended consequence of only having two measures is shown by a recent national study by the Center on Education Policy: 44% of elementary schools both increase time spent on reading and math, and also cut time from science, social studies, art and music, physical education, recess and/or lunch.
3. The so-called "highly qualified teacher" rules create problems without improving education. Special Education teachers are never going to complete 5 or 6 majors in order to teach different high school subjects to a class of children with special needs. These rules wreak havoc on broad-field social studies majors as well. In addition, many small schools currently employ teachers who teach in multiple areas. In order to meet these rules, small schools would have to hire more staff or replace current staff with teachers who have multiple majors. School funding limitations make this impossible.
4. NCLB has changed local control to federal control. While the federal government only supplies about 10% of education funding, the U.S. Department of Education is playing a dominant role in education that has been the states' prerogative before. In Montana that means a significant loss of local control, which is written into our state Constitution. While there may be some who believe that the federal government always knows best, we haven't seen evidence of that in the education field.
5. Funding is inadequate. We applaud you for calling for 40% of the average per pupil expenditure for funding of IDEA, at a recent Appropriations subcommittee hearing. (It is



funny that 40% is called full funding, but not so funny that current federal funding is under 18%.) My staffer gave yours a chart showing the impact on local schools where federal special education mandates cost Montana schools a lot of money, leaving less money to do everything else that schools must do. The entire NCLB funding is inadequate for what is required. In addition, one part of the act that I like, Reading First, is one tool for helping students with reading, which is foundational for all the other subjects, including math. Congress cut 62% from the President's budget. But even at full funding, Reading First only impacts 32 schools in Montana out of 444 public elementary schools.

6. The so-called accountability measures of NCLB serve only to increase public unease about public education, without helping the schools improve. For example, school performance is often impacted by factors that have nothing to do with the quality of the teaching provided. The socio-economic level of the children has the most direct correlation with student success. In the 2007 4<sup>th</sup> grade NAEP math test these were the results using one economic filter to view the data:

|  |     |
|--|-----|
| 4 <sup>th</sup> Grade NAEP Math score            |     |
| Students <b>not</b> eligible for free lunch      | 249 |
| Students eligible for reduced-price lunch        | 236 |
| Students eligible for free lunch                 | 225 |
| Every test at every level shows similar results. |     |

Not surprisingly, a list of schools that do not meet Adequate Yearly Progress also corresponds rather directly to a list of communities with lower income. Even with abundant resources, those schools would have trouble meeting the standards because of factors beyond their control. But in fact, a poor community is often not a desirable living situation to outsiders and usually pays lower salaries, so hiring good administrators and teachers is extremely difficult and the turnover rate is appalling. That is why the NCLB solutions are useless in these situations—there is no sense firing all the staff when it will be extremely difficult to replace them. In many cases there are no other schools of any kind, so choice cannot be an option. There aren't other tutoring options.

NCLB "accountability" uses all sticks and no carrots. This is as effective as the philosophy on the old poster: "The floggings will continue until morale improves."

**Conclusion:** From my travels to schools in Montana, I can report that the Montana education community shares this analysis of the weaknesses of NCLB.

In my view, here are some additional factors, beyond Rep. Young's amendments, that should be included to improve ESEA:

1. Have more measures to determine school success and set realistic goals.
2. When there are consequences, make them helpful for improving schools rather than the opposite.
3. Fully fund good federal requirements like IDEA.
4. Put local school boards back in charge of public education (in Montana) and return the federal government to its former primary role of general support and supplementation for special populations.
5. Give states flexible guidelines to pick the schools most in need.

6. Since federal school improvement funding will always be far less than the need, give states adequate resources to address the schools picked as "most in need." Provide "best practices" technical help to those schools, using state and national resources. Then see what works and keep doing it and see what doesn't and stop it.
7. Use other federal and state resources to attack the sources of poverty at the root, including active promotion of high-quality education, community economic development, and working with tribal governments where appropriate to bring cultural forces to bear on the issues. Schools alone cannot solve basic societal issues.

This is a lot more than Brent Mead wanted when he asked the office's opinion of Rep. Young's bill, but that request forced us to consider all that we have experienced in Montana in order to spell out our view of the No Child Left Behind Act. I am taking the liberty of copying this letter to Senators Baucus and Tester as well. Please feel free to call on my office whenever you need information about education in Montana.

Sincerely,



Linda McCulloch  
State Superintendent

Cc: Sen. Max Baucus  
Sen. Jon Tester